



*Comments  
General,  
R1, R2, R9,  
R3, R5*

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**Tri-TAC**

**Jointly Sponsored by:  
League of California Cities  
California Association of Sanitation Agencies  
California Water Environment Association**

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Reply to: 925 L Street, Suite 1400  
Sacramento, CA 95814  
(916) 446-0388  
E-mail: rlarson@mfdillon.com

May 17, 2002

Arthur G. Baggett, Jr., Chair  
and Members  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

**SUBJECT: COMMENTS REGARDING THE PROPOSED 2002 CLEAN  
WATER ACT SECTION 303(d) LIST**

Dear Chairman Baggett and Members:

The California Association of Sanitation Agencies (CASA) and Tri-TAC appreciate the opportunity to provide comments regarding the proposed 2002 Section 303(d) List. CASA and Tri-TAC are statewide organizations comprised of members from public agencies and other professionals responsible for wastewater treatment. Tri-TAC is jointly sponsored by CASA, the California Water Environment Association, and the League of California Cities. The constituency base for CASA and Tri-TAC collects, treats and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California.

As you know, the composition of the State's 303(d) List is among the most important water quality regulatory issues facing California today. This list determines where total maximum daily loads (TMDLs) will be developed, and thus, where California's limited water quality resources will be directed over the next several years. Under the State Water Resource Control Board's (SWRCB) current practice, whether a water body is included on the List also affects NPDES permitting during the interim period between listing and TMDL development. In light of the consequences of listing, we believe it is critically important that the 303(d) List include only those water quality limited segments for which TMDLs are required.

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This letter identifies those aspects of the proposed 2002 List that CASA and Tri-TAC support as well as our recommendations for further changes. Participation in the 2002 process has confirmed and highlighted the need for a clear, consistent and technically sound State policy to govern future listing and de-listing decisions. We look forward to assisting the SWRCB in developing a workable policy that will guide decisions during the next listing cycle.

→ **CASA and Tri-TAC Support the Establishment of a “Watch” List.**

→ { We concur with the SWRCB staff recommendation to establish a “Watch” List of water bodies where the information and available data are insufficient to warrant placement on the 303(d) List or where an alternative program is in place to address the impairment. The “Watch” list provides a mechanism to identify and track water bodies where more information must be collected to determine whether water quality standards (beneficial uses and water quality criteria or objectives) are attained. Water bodies on the “Watch” List should receive high priority for monitoring or further study before the next update of the 303(d) list. Formal criteria for placing water bodies on the “Watch” List should be developed as part of the Statewide Listing and De-Listing Policy.

**Placement on “Watch” List where Data are Insufficient:** We support the staff recommendations to place water bodies on the “Watch” List rather than the 303(d) List where the data are insufficient to show exceedance of a standard. Examples include the Gualala River (temperature) in Region 1; Robison Creek (nitrogen), Buckeye Creek (phosphorous) and Stampede Reservoir (pesticides) in Region 6; and Little Corona Beach (bacteria) in Region 8.

**Placement on “Watch” List where an Alternative Enforceable Program is in Place.** CASA and Tri-TAC support the recommendations to place certain water bodies on the “Watch List” rather than on the 303(d) List, or to move them from the 303(d) List of waters for which TMDLs are required to the “Watch List, where an alternative enforceable program is in place to achieve standards. TMDLs are a means to attainment of water quality standards, not an end in themselves, and it simply does not make sense to direct limited resources to development of TMDLs where another enforceable program is already in place to achieve the needed pollutant reductions. In Region 2, for example, the South Bay Basin/ Mission and Islais Creeks are proposed for the “Watch” List because these waters are part of the Bay Protection and Toxic Cleanup Program (BPTCP) Consolidated Cleanup Plan. Examples of impairments that were originally proposed for 303(d) listing in Region 4 that now appear on the “Watch” List include the San Gabriel River Estuary for Trash (the alternative enforceable program is the Municipal Stormwater Permit, which contains trash provisions), and some listings in Dominguez Channel and Consolidated Slip (alternative enforceable program is the BPTCP). We think that use of the “Watch” List in these instances makes sense.

**Placement on "Watch" List Where the Stressor is Unknown.** We support the recommendations to place waters on the "Watch" List rather than the TMDL development List when the cause of impairment, or stressor, is not known. In these waters, additional investigation and study is required to determine why the beneficial use is not being met, and whether, in fact, a pollutant is the cause of the impairment. In cases where stressors other than pollutants actually are causing the problem but a TMDL is pursued anyway, significant resources may be expended in hopes of solving the problem, but to no avail. For example, algae growth may be caused by sunlight in concrete-lined channels rather than by nutrient levels. In those cases, doing a TMDL for nitrogen and phosphorous that results in more stringent point source effluent limits may not solve the problem. In the Malibu Creek watershed, for example, the Las Virgenes Municipal Water District does not discharge for seven months of the year, yet there are "excess" algae levels both upstream and downstream of their treatment plant during the non-discharge period. } E

The "Watch" List affords the opportunity to gather needed information and determine the stressor before jumping in to the TMDL development process. Examples of appropriate placement on the "Watch" List include Cold Creek in Region 4 (unclear cause of algae growth), Lower and Upper Putah Creek in Region 5 (unknown toxicity) and Suisun Basin/Peyton Slough (sediment toxicity/effects-based listing and alternative enforceable program in place.) in Region 2.

**CASA and Tri-TAC Support the De-Listing of Waters Where Impairment is Due to Natural Conditions.** E

In water bodies where standards are not met due to natural conditions, a TMDL is neither technically feasible nor practical. We believe it is appropriate to exclude from the TMDL development List those waters that are impaired due to natural causes. Examples include Alkali Lake (salinity and TDS), Grant Lake (arsenic), Crowley Lake (arsenic) and Heavenly Valley Creek (phosphorous) in Region 6.

**CASA and Tri-TAC Support De-Listing Where Data Show No Impairment of Beneficial Uses.** E

In some cases, beneficial uses are not impaired even though water column or other measurements show exceedances above a water quality criterion. We support the recommendations to de-list waters where the weight of evidence shows no actual impairment. The most prominent examples are the proposed de-listings in San Francisco Bay for copper and nickel, where extensive scientific work shows that beneficial uses in the Bay are not impaired despite occasional exceedances of numeric objectives. Another example is the East Fork of the Carson River where 5 out of 26 measurements for pH were slightly outside the water quality objective, yet these deviations were not of sufficient magnitude to affect beneficial uses.

→ **CASA and Tri-TAC Support De-Listing Waters Where the Listings were Based on Elevated Data Levels.**

A number of waters were included on prior 303(d) Lists due to so-called Elevated Data Levels (EDLs) in fish tissue. The EDLs are informal criteria derived from the SWRCB's Toxic Substances Monitoring Program (TSMP) database. EDLs are internal comparative measures developed by SWRCB staff where concentrations of substances are presented as percentile rankings compared to a distribution of previous TSMP data. "EDLs are not directly related to potentially adverse human or animal health effects; they are only a way to compare findings in a particular area with the larger data base of findings from all over the state" (TSMP Data Report, 1994-1995).

CASA and Tri-TAC agree that such informal criteria are insufficient to warrant listing, and we support the recommendations to de-list waters that were originally listed based on these informal criteria. Examples of proposed de-listings include the Ventura River, Conejo Creek, Coyote Creek and Calleguas Creek R-1 in Region 4.

→ **CASA and Tri-TAC Support the Recommendation that Waters Be Listed Based on Water-Body-Specific Information.**

It may seem to be stating the obvious that a water body should not be placed on the 303(d) List for TMDL development on the basis of data not collected in the water body, or where beneficial uses and water quality standards have not been established. Yet, some regional board listing proposals are not based on water-body specific information. We support the SWRCB staff recommendations not to include these listings due to the absence of any confirmation of impairment. For example, the SWRCB staff recommends excluding from the list a series of creeks in Region 8 where no beneficial uses have been designated.

→ **CASA and Tri-TAC Support the Proposed Exclusion of Listings Where No QA/QC Procedures Were Used.**

CASA and Tri-TAC have long maintained that the SWRCB ought to establish minimum data quality and quantity standards for 303(d) listing. The SWRCB staff recommendation to exclude from the List waters listed solely on the basis of data lacking adequate QA/QC procedures is a step in the right direction. For example, several sites within the Santa Barbara Channel in Region 3 are not proposed for listing because "QA procedures were not used."

**CASA and Tri-TAC Support the Development of a “TMDLs Completed” List.** The 303(d) List is used to establish the priority and schedule for TMDL development. Just as waters for which more information is needed are tracked via the “Watch” List, it makes sense to inventory and track those waters where TMDLs have been completed but water quality standards have not yet been attained. This will allow the SWRCB and regional boards to follow the progress of TMDL implementation separately from the 303(d) List of TMDLs to be developed. ←

### **ISSUES OF CONCERN REGARDING THE PROPOSED 2002 303(d) LIST**

As discussed in detail above, there are many aspects of the proposed 2002 303(d) List that CASA and Tri-TAC believe reflect a constructive and technically sound approach to 303(d) Listing. There remain, however, a number of significant issues regarding the 2002 List that have not been adequately addressed, and we urge the SWRCB to make further revisions to the List prior to its adoption.

### **Specific Listings Carried Over From the 1998 List Should Be Re-Evaluated to Ensure Consistency and Fairness in the Listing Process.** ←

Among the assumptions upon which the proposed 2002 303(d) List is founded is that the 1998 Section 303(d) List “forms the basis” for the 2002 submittal. (Staff Report, Vol. I, p.2.) As a result, SWRCB staff have not undertaken a critical review of listings carried over from the previous list. While we understand the workload challenges involved in reviewing each of the existing listings, it is the SWRCB’s obligation to prepare an appropriate and scientifically-based List. Many of the “grandfathered” listings suffer from the same flaws identified and addressed by the SWRCB staff in reviewing the regional boards’ proposed changes to the List—listings based on inadequate data, listings based on EDLs, impairments which will be addressed by alternative enforceable programs, and so on.

CASA and Tri-TAC urge the SWRCB to review, at a minimum, those 1998 Listings that have been identified in individual comment letters as warranting de-listing or placement on the “Watch” List, and those for which development of a TMDL is planned in the next several years. Waiting until the next listing cycle—which could be four or five years down the road—is not adequate, given the consequences of listing and TMDL development outlined above. If the SWRCB does not conduct this review, the outcome will be anomalous results and a misdirection of resources.

→ **Listing Should Not Be Based on Exceedances of Draft Guidance or Informal Criteria that are Not Adopted Water Quality Objectives**

CASA and Tri-TAC have long been concerned about the use of informal advisory criteria as the basis of listing decisions. If adopted objectives are not providing adequate use protection, those objectives should be revisited through the standard-setting process. The Clean Water Act and Porter-Cologne Water Quality Act have requirements that serve important purposes in establishing water quality objectives. Most notably, Water Code Section 13241 requires that specified factors be considered by a Regional Board in establishing water quality objectives. Listing waters based on some other criterion and proceeding with TMDL development constitutes an "end-run" around the statutorily-mandated standard setting process.

For example, the North Coast Regional Board and the SWRCB staff have proposed a new listing for Region 1 that is based on exceedances of Draft Department of Health Services Guidance for Fresh Water Beaches (see SWRCB Staff Report, pg. 1-8). This guidance has not been subjected to public review and comment. DHS is in the process of establishing a stakeholder group to evaluate and make recommendations for revisions to the draft. The Fact Sheet prepared by SWRCB staff indicates that the data are insufficient to show exceedance of the adopted REC-1 water quality objective for bacteria, but that the data do show exceedance of the levels set forth in the draft guidance. There are also several examples of listings proposed for Region 2 and Region 9 that were based on "Beach Closures." The criteria used by the local health agencies to post beaches are not adopted water quality objectives and, at best, indicate a snap shot in time rather than an ongoing impairment. Beaches may be closed as a public health precaution following a sewer spill, or following major storm events that create substantial urban runoff flows. These closures may occur whether or not monitoring shows any elevated levels in the water body.

→ **Water Bodies Should Not be Included on the TMDL Development List Based Upon Inadequate Data.**

The draft 2002 303(d) List still includes several examples of proposed listings that are based on a single sample, or on very limited data, such as a small number of samples, or data that are not temporally or spatially representative. This issue is exacerbated because there are no guidelines or requirements for a minimum number of sampling events or frequency of exceedances to declare a water body impaired. In some cases, the SWRCB has proposed placement on the Watch List, instead of the 303(d) list, when the proposed listing is based on a single sample. For example, in Region 3, the SWRCB has proposed to place San Luis Obispo Creek on the Watch List instead of the 303(d) list because only 1 composite fish tissue sample (1 composite of 20 fish taken during a single sampling event) was used as the basis for listing. In this case, the State Board proposed placement on the Watch List because

there are "not enough samples to list" (see pg. 3-30). However, in Region 5 (pg. 5-6), the SWRCB recommended placement of the Upper Bear River on the 303(d) list based on samples from 3 fish taken during a single sampling event. The proposed listing of Little Deer Creek in Region 5 (pg. 5-28) is also based on fish tissue samples taken on a single day.

In Region 8, Bolsa Chica is proposed for the "Watch" List, because the data "does not meet minimum requirement of 10 samples for water chemistry data" and more monitoring is needed. (p. 8-26.) However, there are several examples of 303(d) listings in Region 9 that are based on less than 10 samples (see pgs. 9-1, 9-8, and 9-9). In Region 2, the San Pablo Basin/Petaluma River is proposed for listing based on four exceedances of the nickel criterion over a nine-year period. In addition, many waters recommended for placement on the 303(d) list lack temporal representation. For example, Aliso Creek in Region 9 is proposed for listing as impaired due to fecal coliform based on data collected during the month of October in 1998 (5 samples in a 30-day period). Samples collected over a short time period or during a single season may not be representative of the overall conditions of the water body. Listings based on data biased toward unusual conditions (such as flow, runoff, or season) should be removed from the 303(d) list until better temporal representation of water quality conditions can be established.

These types of limited data do not provide sufficient basis for development of a scientifically-sound TMDL and require additional monitoring before impairment determinations can be made. CASA and Tri-TAC recommend that water bodies for which there is inadequate data be placed on the "Watch" List and targeted for further monitoring.

**Water Bodies Should be Placed on the "Watch" List Where Site-Specific Objectives are Being Developed.** ←

We also recommend that, where site-specific objectives (SSOs) are being developed for a water body pursuant to the process set forth in the State Implementation Policy for Toxics (SIP), these waters be placed on the "Watch" List. The outcome of the SSO process may demonstrate that the water quality objective was inappropriate, the water body is not impaired, and obviate the need for TMDL development. We support the Region 2 recommendation to de-list the Santa Clara Basin for copper and place the water body on the "Watch" List due to the development of an SSO scheduled for adoption in Spring 2002. SWRCB staff recommended that listing be maintained because the SSO has not yet been adopted. We do not believe it makes sense to direct resources to TMDL development where the SSO process may render the TMDL unnecessary, and recommend that the SWRCB place the Santa Clara Basin/South San Francisco Bay on the "Watch" List for copper rather than the 303(d) List.

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In summary, CASA and Tri-TAC applaud many of the SWRCB staff's proposed revisions to the 2002 303(d) List. We believe these changes signal an important policy direction to include on the 303(d) List only those waters where TMDLs are required—and where the TMDL process will yield potential water quality benefits. Given the limited resources for development and implementation of TMDLs, we believe it is critical that California focus its program on those waters where impairments and stressors are documented and understood. The addition of a "Watch" List ensures that water bodies where there is cause for concern but only limited information will receive the monitoring and investigation needed to determine whether a TMDL is required.

Thank you for your consideration of our comments.

Sincerely

David R. Williams, Chair  
Tri-TAC

Roberta L. Larson  
CASA

cc: Celeste Cantu, Executive Director  
Craig J. Wilson, SWRCB